

R.D. # 0004-05
Teterboro, NJ

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 22**

JET AVIATION OF TETERBORO, L.P.¹

Employer

and

CASE 22-RC-12546

**TEAMSTERS LOCAL 641, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, AFL-CIO**

Petitioner

DECISION AND ORDER

I. INTRODUCTION:

The Petitioner filed a petition under Section 9(c) of the National Labor Relations Act, seeking to represent a unit of all full-time and regular part-time line servicemen and lead line servicemen employed by the Employer at its Charles Lindburgh Drive, Teterboro, New Jersey facility. In all, Petitioner seeks to represent a unit of approximately 73 employees. The Employer asserts that it is a carrier under the Railway Labor Act or, alternatively, that it is a non-carrier employer controlled by carriers and commonly owned with carriers. The Employer argues, therefore, that its operations are conducted under the jurisdiction of the National Mediation Board and not, as alleged by the Petitioner, the National Labor Relations Board. Thus, the Employer asserts that the petition is not appropriately filed with the

¹ The name of the Employer appears as amended at the hearing.

National Labor Relations Board and should be dismissed.

The threshold issue for hearing in this matter is whether the National Labor Relations Board or the National Mediation Board has jurisdiction over the Employer. Hearing regarding any other potential issue was deferred until this jurisdictional issue is decided.

I find, for the reasons described below, that the National Mediation Board and not the National Labor Relations Board has jurisdiction over the Employer and, therefore, that the petition must be dismissed.

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding,² I find:

1. The hearing officer's rulings are free from prejudicial error and are hereby affirmed.
2. The Parties stipulated that in the event that the National Mediation Board is found not to have jurisdiction over this matter, the Employer is an employer engaged in commerce within the meaning of Section 2(6) and 2(7) of the Act and therefore subject to the jurisdiction of the National Labor Relations Board.³
3. The labor organization involved claims to represent certain employees of the Employer.⁴

² Briefs filed by the parties have been considered.

³ The Employer, Jet Aviation Teterboro, L.P., a New Jersey Limited Partnership, is engaged in the provision of servicing and maintaining aircrafts at its Charles Lindburgh Drive, Teterboro, New Jersey facility, the only facility involved herein.

⁴ The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

II. BACKGROUND AND POSITIONS OF PARTIES:

The Employer provides ground services for charter airplanes at its Teterboro, New Jersey site such as refueling, deicing, maintaining, cleaning and towing aircraft. The Employer and two air carriers, Jet Aviation Business Jets (“Business”) and Jet Aviation Private Fleet (“Private”) are owned by the same holding company, Jet Aviation Holdings, Inc. (“Holdings”). The majority of work performed by the Employer is performed for Business and Private, both located at Teterboro Airport. Petitioner maintains that the Employer falls under the National Labor Relations Board’s jurisdiction because the Employer is not directly owned by a common carrier and, even if it were, the percentage of overall gross revenues from common carrier activities is so limited as to place the Employer outside the National Mediation Board’s jurisdiction.

Petitioner acknowledges in its brief that the nature of the work performed by the Employer’s employees is that which is traditionally performed by employees of air carriers.

The Employer contends that it operates under the jurisdiction of the National Mediation Board, not the National Labor Relations Board, because its common ownership with carriers Business and Private places the Employer within the definition of “carrier” under the Railway Labor Act. The Employer further asserts that as it performs work traditionally considered “carrier” work and as its operations are directly or indirectly controlled by carriers, the National Mediation Board has jurisdiction over its operations.

III. FACTS:

The Petitioner offered one witness at the hearing: Franklin Marquez (Junior Lead Line Service Technician). The Employer presented two witnesses: Edwin Melendez (Senior

Vice President of Human Resources, Jet Professionals⁵) and Michael Szczechowski (Senior Vice President and General Manager of the Employer) as well as numerous exhibits. The Employer's witnesses described a corporate family structure by which an "umbrella" holding company, Holdings, owns service companies, such as the Employer as well as common carrier companies, such as Business and Private. Melendez, referring to Employer's Exhibit 1, explained that Holdings owns 100% of Business and Private, both of which provide chartered flight services from their home base of Teterboro Airport to interstate and intrastate destinations. Melendez testified that 100% of Business' gross revenue was derived from charter flight services,⁶ while approximately 95%⁷ of Private's gross revenue was derived from charter flight services.⁸

The Employer is a limited partnership, 1% of which is owned by Jet Aviation of America, Inc. and 99% of which is owned by Jet Aviation Texas, Inc. Melendez explained that Holdings owns both Jet Aviation of America, Inc and Jet Aviation Texas.⁹ Thus, the Employer asserts, carriers Business, Private and the Employer are all either directly or indirectly owned by the same holding company.

⁵ Jet Professionals provides human resource services for the Holdings family of companies and is itself indirectly owned by Holdings.

⁶ Business operates fifty-two privately owned aircraft, thirty-seven of which Business contracts for use by third parties and fifteen of which are owned by individuals and are utilized only by those private owners. All of these aircraft have charter certificates issued by the Federal Aviation Administration.

⁷ The remaining 5% was derived from payments from film companies who use Private's aircraft in videos and commercials.

⁸ Private, through long term lease arrangements, owns four planes which it operates for its charter service. Private provides the pilots and crew for these aircraft and arranges for on-ground support services through the Employer.

⁹ Jet Aviation Texas performs service work for carriers similar to that performed by the Employer.

Business and Private are both headquartered at Teterboro Airport and share a facility (Teterboro Airport Building No. 112) with the Employer and Holdings. Business and Private are the Employer's main customers. More than 50% of the Employer's revenue is generated by providing services to Business and Private. This figure is exclusive of the Employer's jet fuel sales to Business and Private and other private customers. The remainder of the Employer's revenue is generated by providing ground services to private customers and through hangar space rentals to Holdings' subsidiaries and to private individuals. The Employer services the needs of Business and Private before those of individual private customers. The Employer bills its customers, including Business and Private, for services and fuel provided to them. The Employer purchases its supplies independently, but then invoices the cost of supplies to Holdings, which in turn remits payment to the suppliers.

The employees of Business, Private and the Employer all wear Jet Aviation uniforms. Employees of Holdings and the Employer share a common building at Teterboro Airport. If administrative employees, such as a secretary or the controller of Holdings, are absent, one of the Employer's administrative employees will fill in at Holdings and vice-versa.

Top management of the companies which are directly and indirectly owned by Holdings, including the Employer, Business and Private, all report to Tale Staub, Holdings' Chief Operating Officer. Holdings administers facilities and aircraft insurance for its subsidiaries. Controllers at each company report any financial information to Holdings' Chief Financial Officer. Holdings issues employee paychecks, files corporate tax returns for all companies and provides other financial and technical support services to its subsidiary companies, such as the Employer.

Rather than charge its subsidiaries for the cost of providing administrative services, Holdings allocates among its subsidiaries the cost of its own employees' salaries. Other expenses are disseminated by Holdings among its subsidiaries. For example, if the Employer loses a workers' compensation claim, the cost of that loss is distributed by Holdings among the other subsidiaries, according to each company's head count; the subsidiaries pay their share of the Employer's loss from their revenues. The cost to Holdings of insurance coverage is also disseminated across all the Holdings subsidiaries, including the Employer. Similarly, all subsidiary companies' revenues are shared across the board, based upon company head count.

Jet Professionals is Holdings' human resources subsidiary. Jet Professionals assigns field human resource managers to the Holdings companies, such as the Employer. Human Resource policies are formulated by Holdings, are applicable to all companies and are administered through Jet Professionals. There is one across-the-board health insurance policy administered by Holdings which covers the employees of the Employer, Private and Business, as well as Holding's other subsidiaries mentioned in Employer Exhibit 1. Holdings sets the job grades and salary ranges for all its subsidiaries, including the Employer. Within these ranges, local management decides what salaries new hires receive.

Holdings, through Jet Professionals' employees such as Melendez or his subordinates, has the final say in employee discharge decisions and can override local management recommendations. In this regard, Melendez or his subordinates will conduct an investigation and speak with the employee involved before a final discharge decision is made.

The Employer's General Manager, Szczechoski, testified that the services performed by the Employer are performed almost entirely at the convenience of carriers Business and

Private. In this regard, representatives of the Employer, Business and Private meet twice daily to coordinate service and maintenance work scheduling. This insures that the Employer can give top priority to accommodating Business and Private's daily needs. Szczechoski testified that Business' and Private's needs define the Employer's staffing levels, the specific staff members who will be utilized, what work will be assigned to those staff, the hours that the staff works and the work performed. Two of the Employer's mechanics are dedicated to maintaining Private's aircraft. Business' Maintenance Coordinators can request that an Employer employee work overtime to accommodate Business' needs. Maintenance Coordinators and Crew Chiefs for Business and Private can contact the Employer's employees directly – something that private customers cannot do. Business' crew chiefs supervise the Employer's employees to insure that maintenance on Business' planes is performed correctly.

Business' and Private's management can access the Employer's maintenance records. In contrast, a private customer is required to utilize a request procedure, which limits the customer's access to only specific maintenance records. Business and Private also have control over the type of training that the Employer's employees receive. For example, when Business purchased a specific type of helicopter, the Employer was required to send its mechanics for training to be able to maintain the helicopter. The Employer would not make this type of investment of time and money for a private customer.

IV. LEGAL ANALYSIS:

In determining whether an employer and its employees are subject to the jurisdiction of the Railway Labor Act or the National Labor Relations Act, the Board has adopted the National Mediation Board's application of a two-pronged test. *Chelsea Catering*

Corporation, 309 NLRB 822 (1992) adopting *Chelsea Catering Corporation*, 19 NMB 301 (1992); *Globe Aviation Services*, 334 NLRB 278 (2001). First, the National Mediation Board determines whether the nature of the work performed is that traditionally performed by employees of rail or air carriers. Second, it determines whether a common carrier or carriers exercise direct or indirect ownership or control over the employer. Both parts of this test must be satisfied for the National Mediation Board to assert jurisdiction over the employer. *Chelsea Catering Corporation*, above, adopting *Chelsea Catering Corporation*, 19 NMB at 303-304; *Globe Aviation Services, Inc.*, above; *Service Master Aviation Services*, 325 NLRB 786 (1998).

The Petitioner acknowledged in its brief and the record facts bear out that the Employer performs services that satisfy the first prong of this test, as these services have been found to be services traditionally performed by fleet service employees in the airline industry. *Evergreen Aviation Ground Logistics Enterprises, Inc.*, 327 NLRB 869 (1999); *Henson Aviation, Inc., D/B/A Friendship of BWI*, 266 NLRB 207 (1983). See also *Signature Flight Support of Nevada*, 30 NMB 392 (2003); *AMR Service Corporation*, 18 NMB 348 (1991). The first part of the test is therefore met.

Regarding the second prong of the test, Section 151 First of the Railway Labor Act defines a “carrier” to include “...any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with transportation.” Pursuant to Section 181 of the Railway Labor Act, the definition of “carrier” also covers air carriers. See *Chelsea Catering Corporation*, above, adopting

Chelsea Catering Corporation, 19 NMB at 304; *Globe Aviation Services*, above; *Evergreen Aviation Ground Logistics Enterprises, Inc.*, above.

Under this definition, there are two ways in which the Employer here has satisfied the second prong of the National Mediation Board's jurisdictional test. First, the Employer is indirectly owned by Holdings, which directly owns Business and Private, each of which is an air carrier. The record establishes that Holdings controls almost every aspect of the Employer's, Business' and Private's financial, managerial, personnel and technical operations. That control is accomplished either directly or through Holdings' other wholly owned subsidiaries, such as Jet Professionals. The National Mediation Board has held that "[w]hen a carrier and an entity performing work traditionally performed by airline industry employees are commonly owned by a holding company..." the entity is subject to the Railway Labor Act. *Chelsea Catering Corporation*, above, adopting *Chelsea Catering Corporation*, 19 NMB at 304, citing *AMR Services Corporation*, 18 NMB 348 (1991); *Evergreen Aviation Ground Logistics Enterprises, Inc.*, above. See also, *O/O Truck Sales*, 21 NMB 258, 268 (1994); *Delpro Company V. NMB*, 509 F. Supp. 468 (D. Del. 1981); *Delpro Company v. Railway Carmen*, 519 F. Supp. 842 (D. Del. 1981), aff'd 676 F. 2d 960 (3d Cir.), cert. denied, 103 S. Ct. 343 (1982). Thus, under this part of the Railway Labor Act definition, since the Employer and carriers Business and Private are all controlled by the same parent – Holdings – the second prong of the National Mediation Board's jurisdiction test is met as to the Employer.

The second prong of the National Mediation Board's jurisdiction test is also met because carriers Business and Private exercise direct control over the Employer's operations. To determine whether a carrier exercises direct or indirect control over a non-carrier

employer, the National Mediation Board evaluates the following factors: “the extent of the carriers’ control over the manner in which the [non-carrier] company conducts its business; access to company’s operations and records; role in personnel decisions; degree of supervision over the company’s employees; control over employee training; and whether company employees are held out to the public as employees of the carrier.” *Evergreen Aviation Ground Logistics Enterprises, Inc.*, above, adopting *Evergreen Aviation Ground Logistics Enterprises, Inc.*, 25 NMB 460 (1998); *Signature Flight Support of Nevada*, 30 NMB 392, 400 (2003); *Sapado I*, 18 NMB 525 (1991). See also *International Cargo Marketing Consultants D/B/A Alliance Air*, 31 NMB 396, 407 (2004). Here, the record establishes that Business and Private exercise control over scheduling of the Employer’s work; choice of employees to perform specific work; training of employees; granting of overtime to employees; quality review of employees’ work; access to the Employer’s maintenance records; and review of discharge decisions. Additionally, the Employer’s, Business’ and Private’s employees all wear Jet Aviation uniforms, thus providing the appearance to their customers of being employees of the same company.¹⁰

Based on the foregoing, carriers Business and Private exercise sufficient control over the Employer’s employees to support a finding that the Employer has met the second prong

¹⁰ Petitioner argues that the National Mediation Board does not have jurisdiction over the Employer because a small percentage of all revenues attributable to the United States operations of Jet Aviation International, the company which owns Holdings, are derived from charter flight services. Petitioner’s argument is flawed. In the cases cited by Petitioner in support of this argument, the Board refused to transfer jurisdictional issues to the National Mediation Board because the employer involved derived minimal revenue from charter flights. First, Petitioner has misinterpreted the Board’s reasoning in these cases to apply to the employer’s owner, when the Board was clearly analyzing revenue figures for the employer itself. Second, in the instant matter, the record shows that the Employer derives more than 50% of its revenue from servicing carriers Business and Private and thus, contrary to Petitioner’s argument, could not be said to have only a minimal percentage of revenue derived from carrier-related services.

of the National Mediation Board's test. *Evergreen Aviation Ground Logistics Enterprises, Inc.*, above, adopting *Evergreen Aviation Ground Logistics Enterprises, Inc.*, 25 NMB 460 (1998); *Signature Flight Support of Nevada*, 30 NMB 392, 400 (2003); *Sapado I*, 18 NMB 525 (1991). See also *International Cargo Marketing Consultants D/B/A Alliance Air*, 31 NMB 396, 407 (2004). Thus, jurisdiction over the Employer, Jet Aviation of Teterboro, L.P., is properly found under the Railway Labor Act. Therefore, as jurisdiction under the National Labor Relations Act is not appropriate, I shall dismiss the petition.

V. ORDER:

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is, dismissed.

VI. RIGHT TO REQUEST REVIEW:

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. The Board in Washington must receive this request by **April 14, 2005**.

Signed at Newark, New Jersey this 31st day of March, 2005.

/s/ Gary T. Kendellen

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